



# NATIONAL WILDLIFE FEDERATION®

GREAT LAKES NATURAL RESOURCE CENTER®

People and Nature: Our Future Is in the Balance

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June 28, 2002

## VIA FIRST-CLASS MAIL AND FAX

Ms. Mary Ann Stevens  
Rules Section  
Office of Water Quality  
Indiana Department of Environmental Management  
P.O. Box 6015  
Indianapolis, Indiana 46206-6015  
317-232-8406

Re: Statewide Mercury Variance, Notice #02-138(WPCB)

Dear Ms. Stevens:

On behalf of the National Wildlife Federation ("NWF") and the Indiana Wildlife Federation ("IWF"), we are writing to comment on Indiana's proposed development of a new rule concerning a statewide mercury variance.

NWF and IWF have been involved in policy reform and pollution prevention efforts on mercury issues for a number of years, and they perceive a continued need for measures that will reduce and ultimately eliminate the release of mercury into the environment from human activities. Development of a statewide mercury variance would undermine these goals.

In particular, mercury pollution has impaired many of Indiana's surface waters and led to fish consumption advisories that are still in effect. This weighs against the adoption of a statewide mercury variance. Moreover, the Indiana Department of Environmental Management ("IDEM") has failed to establish that a statewide variance is needed.

We offer the following specific reasons for opposing a statewide mercury variance:

- To get a variance in the Great Lakes Basin, a permittee must demonstrate that attaining water quality standards is not feasible and that any increased risk associated with a variance is consistent with the protection of the public health, safety and welfare. *See* 40 C.F.R. § 132, Appendix F, Procedure 2, Section C.<sup>1</sup> IDEM has failed to offer sufficient information to establish that these demonstrations can be made.

<sup>1</sup> C. *Conditions to Grant a Variance*. A variance may be granted if:

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- In particular, neither IDEM nor any independent authority has performed research that establishes a need for a statewide mercury variance. The purported need for a statewide mercury variance is based solely upon industry comments and subsequent discussions regarding IDEM Notice #01-135.
- IDEM has claimed in a brochure entitled "NPDES Permitting and Mercury" that mercury is "ubiquitous." Preliminary data from a study by the U.S. Geological Survey, however, indicates that several areas on Lake Michigan actually have mercury levels below the 1.3 ng/l limit. This casts doubt both on IDEM's claim and the case for a statewide mercury variance.
- In the same brochure, IDEM claims that ambient mercury concentrations exceed the 1.3 ng/l limit based on "limited surface water quality data." "Limited" data cannot justify a statewide variance.
- IDEM should calculate the additional loadings and impacts to receiving waters that would result from a variance. For example, a change from 150 to 40 to 10 to 1.3 ng/l would result in daily mercury discharge from a 50 million gallon/day wastewater treatment plant of 30, 7.6, 1.9 and 0.2 grams of mercury, respectively. These variations would have dramatically different impact upon the receiving waters. Moreover, many water bodies are affected by multiple mercury dischargers.
- Indeed, each water body is unique, with its own background mercury sources, flow rate, flow volume, etc. Variances should be administered on a case-by-case basis to take into account and reflect these important differences.

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1. The permittee demonstrates to the State or Tribe that attaining the WQS is not feasible because:
    - a. Naturally occurring pollutant concentrations prevent the attainment of the WQS;
    - b. Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the WQS, unless these conditions may be compensated for by the discharge of sufficient volume of effluent to enable WQS to be met without violating State or Tribal water conservation requirements;
    - c. Human-caused conditions or sources of pollution prevent the attainment of the WQS and cannot be remedied, or would cause more environmental damage to correct than leave in place;
    - d. Dams, diversions or other types of hydrologic modifications preclude the attainment of the WQS, and it is not feasible to restore the waterbody to its original condition or to operate such modification in a way that would result in the attainment of the WQS;
    - e. Physical conditions related to the natural features of the waterbody, such as the lack of a proper substrate cover, flow, depth, pools, riffles, and the like, unrelated to chemical water quality, preclude attainment of WQS; or
    - f. Controls more stringent than those required by sections 301(b) and 306 of the CWA would result in substantial and widespread economic and social impact.
  2. In addition to the requirements of C.1, above, the permittee shall also:
    - a. Show that the variance requested conforms to the requirements of the State's or Tribe's antidegradation procedures; and
    - b. Characterize the extent of any increased risk to human health and the environment associated with granting the variance compared with compliance with WQS absent the variance, such that the State or Tribe is able to conclude that any such risk is consistent with the protection of the public health, safety and welfare.

- A *statewide* mercury variance is inappropriate. The limit outside the Great Lakes Basin, 150 ng/l, is already generous. No variance from that limit should be allowed. Nor should a variance allow discharges as high as 30-40 parts per trillion, and certainly not inside the Great Lakes Basin, as proposed in response to IDEM Notice #01-135(WPCB) by the Indiana Manufacturers Association. Many municipal wastewater treatment facilities are currently discharging at levels below 10 parts per trillion. Moreover, EPA set the acceptable level of mercury discharges at 1.3 ng/l for the very good reason that it is a toxic substance that bioaccumulates and has degraded thousands of water bodies within the Great Lakes Basin. Raising the level to the extent proposed by industry would perpetuate existing problems.
- Although Indiana's interest in pollution prevention, source control, and other waste minimization programs is laudable, IDEM should not discourage possibly innovative end-of-pipe controls that may reduce mercury in the waste stream.

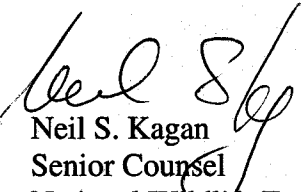
Rather than develop a statewide mercury variance, NWF and IWF recommend that IDEM:

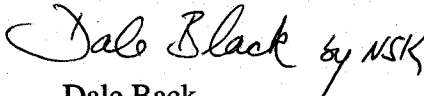
- require the use of EPA Method 1631 for all mercury sampling in Indiana,
- concentrate IDEM resources on revising its general variance procedure to meet EPA requirements. Such a revision will have greater benefits than a mercury variance,
- take advantage of the greater sensitivity of Method 1631 by developing a more stringent mercury limit outside the Great Lakes Basin.

In summary, NWF and IWF believe that only in the face of overwhelming proof should IDEM allow a statewide mercury variance. To date, inadequate research has been done to establish the necessity of a statewide mercury variance. IDEM would best serve the state by adopting EPA Method 1631 and using it to enforce more stringent mercury criteria.

Please include NWF and IWF in the rulemaking work group and send NWF correspondence about work group meetings for this rulemaking.

Sincerely,

  
Neil S. Kagan  
Senior Counsel  
National Wildlife Federation

  
Dale Back  
President  
Indiana Wildlife Federation

Ms. Stevens  
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Legal Intern  
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